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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 RICKY L. BRIGANCE,

8 Plaintiff(s),

Case No. 2:17-CV-250 JCM (GWF)

ORDER

9 v.

10 STATE OF NEVADA, et al.,

11 Defendant(s).  
12

13 Presently before the court is defendants' Las Vegas Metropolitan Police Department  
14 ("LVMPD"), Ryan Courtney ("Courtney"), and Benjamin Cobb's ("Cobb") motion for summary  
15 judgment. (ECF No. 34). Plaintiff Ricky L. Brigance ("Brigance") filed a response (ECF No. 35),  
16 to which defendants replied (ECF No. 36).

17 **I. Facts**

18 On May 24, 2016, at or around midnight, plaintiff and his friend Rayshawn Wesley  
19 ("Wesley") were driving in plaintiff's vehicle. (ECF No. 34). Plaintiff traveled eastbound on  
20 West Lake Mead Boulevard, turned north onto Revere Street, and eventually made a left onto  
21 Bartlett Avenue. *Id.* Both Revere and Bartlett are in residential neighborhoods with 25 miles per  
22 hour speed limits. *Id.* This route crossed from Las Vegas to North Las Vegas and then back into  
23 Las Vegas within four city blocks. *Id.*

24 As plaintiff turned from West Lake Meade onto Revere, Courtney and Cobb, both  
25 LVMPD officers, were travelling northbound on H Street. *Id.* Both officers were wearing body  
26 worn cameras ("BWC"). *Id.* H Street turns into Revere after the West Lake Meade intersection.  
27 *Id.* As the defendant officers approached the West Lake Meade/Revere intersection, the officers  
28 observed plaintiff's vehicle accelerate causing the vehicle to slide sideways. *Id.* at 4. Plaintiff

1 was unaware of how fast he was traveling and recalls his vehicle performing a “slight slide.” *Id.*  
2 at Ex. A 21-22.

3 After plaintiff turned onto Bartlett, Cobb’s BWC shows that plaintiff’s car accelerated  
4 out of defendant officers’ field of vision. *Id.* at Ex. D. Cobb then initiated his overhead lights  
5 and began to pursue plaintiff. *Id.* at 5. Cobb’s BWC shows that he was required to travel at  
6 speeds as high as 60 miles per hour to regain sight of plaintiff’s vehicle. *Id.* at Ex. D.

7 Defendant officers stopped plaintiff’s vehicle on Bartlett, approximately two houses  
8 away from plaintiff’s residence. (ECF No. 25). Plaintiff immediately pulled his vehicle over  
9 and remained compliant and non-resistant. *Id.* Cobb approached plaintiff’s driver’s side  
10 window holding a flashlight. (ECF No. 34). He stated that the basis for the arrest was plaintiff  
11 speeding on H Street and asked if plaintiff had any firearms in the vehicle. *Id.* Plaintiff  
12 truthfully answered that he had a 9 mm handgun under his seat and thereafter complied with  
13 Cobb’s instruction to exit the vehicle. *Id.* Cobb searched the vehicle and located the gun. *Id.* It  
14 was subsequently determined that plaintiff was the lawful owner of the firearm. (ECF No. 25).

15 Upon finding the licensed firearm in plaintiff’s car, Courtney believed that plaintiff was  
16 violating a North Las Vegas ordinance prohibiting the possession of any dangerous or deadly  
17 weapon in an automobile, truck, motorcycle, or other type of vehicle. (ECF No. 34 at 3) (citing  
18 North Las Vegas Code § 9.32.080). However, Courtney was unaware that the city ordinance had  
19 been repealed. (ECF No. 34). Believing that the ordinance was still valid, defendant officers  
20 told plaintiff that he was being arrested for violating the firearm ordinance. *Id.*

21 Plaintiff and Wesley were then arrested and transported to Las Vegas city jail. *Id.*  
22 Wesley was arrested on an unrelated outstanding warrant. *Id.* After arriving at the city jail,  
23 Courtney learned that the North Las Vegas firearm ordinance had been repealed. *Id.* The  
24 defendant officers then changed plaintiff’s charge to reckless driving in violation of  
25 Nev.Rev.Stat § 484B.653. *Id.* (citing Nev.Rev.Stat § 484B.653).

26 As defendant officers inquired about the city ordinance, plaintiff went through the  
27 standard booking process at the city jail. *Id.* A corrections officer later informed plaintiff that  
28

1 his arrest was for reckless driving instead of violating the firearm ordinance. *Id.* The officer did  
2 not explain why the charges against plaintiff were changed. (ECF No. 25).

3 On June 23, 2016, the reckless driving charge against plaintiff was dismissed by the  
4 municipal court. *Id.*

5 On January 1, 2017, plaintiff filed a complaint (ECF No. 1), which was later amended on  
6 June 8, 2017 (ECF No. 25). Plaintiff alleges five claims for relief in his amended complaint: (1)  
7 civil rights violations under 42 U.S.C. § 1983 against all defendants; (2) false arrest against all  
8 defendants; (3) false imprisonment against all defendants; (4) negligent hiring, training,  
9 supervision, and retention against LVMPD; and (5) intentional infliction of emotional distress  
10 against all defendants.

## 11 **II. Legal Standard**

12 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,  
13 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,  
14 show that “there is no genuine dispute as to any material fact and the movant is entitled to a  
15 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is  
16 “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317,  
17 323–24 (1986).

18 For purposes of summary judgment, disputed factual issues should be construed in favor  
19 of the non-moving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be  
20 entitled to a denial of summary judgment, the nonmoving party must “set forth specific facts  
21 showing that there is a genuine issue for trial.” *Id.*

22 In determining summary judgment, a court applies a burden-shifting analysis. The moving  
23 party must first satisfy its initial burden. “When the party moving for summary judgment would  
24 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a  
25 directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has  
26 the initial burden of establishing the absence of a genuine issue of fact on each issue material to  
27 its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000)  
28 (citations omitted).

1 By contrast, when the nonmoving party bears the burden of proving the claim or defense,  
2 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential  
3 element of the non-moving party's case; or (2) by demonstrating that the nonmoving party failed  
4 to make a showing sufficient to establish an element essential to that party's case on which that  
5 party will bear the burden of proof at trial. *See Celotex Corp.*, 477 U.S. at 323–24. If the moving  
6 party fails to meet its initial burden, summary judgment must be denied and the court need not  
7 consider the nonmoving party's evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–  
8 60 (1970).

9 If the moving party satisfies its initial burden, the burden then shifts to the opposing party  
10 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v. Zenith*  
11 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the  
12 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient  
13 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing  
14 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,  
15 631 (9th Cir. 1987).

16 In other words, the nonmoving party cannot avoid summary judgment by relying solely on  
17 conclusory allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040,  
18 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the  
19 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue  
20 for trial. *See Celotex*, 477 U.S. at 324.

21 At summary judgment, a court's function is not to weigh the evidence and determine the  
22 truth, but to determine whether there is a genuine issue for trial. *See Anderson v. Liberty Lobby,*  
23 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all  
24 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the  
25 nonmoving party is merely colorable or is not significantly probative, summary judgment may be  
26 granted. *See id.* at 249–50. Moreover, when video evidence is available and blatantly contradicts  
27 the non-moving party's version of events, video evidence is preferred. *See Scott v. Harris*, 550  
28 U.S. 372, 380-81 (2007).

1     **III.     Discussion**

2             **a.   Civil rights violations under 42 U.S.C. § 1983**

3             Section 1983 is not itself a source of substantive rights, but rather is a procedural vehicle  
4     that vindicates federal rights elsewhere conferred. *See Albright v. Oliver*, 510 U.S. 266, 271  
5     (1994). To make out a prima facie case under § 1983, the plaintiff must prove that the defendant  
6     (1) acted under color of state law and (2) the conduct deprived a person of rights, privileges, or  
7     immunities secured by the Constitution or laws of the United States. *See Parratt v. Taylor*, 451  
8     U.S. 527, 535 (1981).

9             The defendants do not dispute that they acted under color of state law as LVMPD officers.  
10    (ECF No. 34 at 10). Therefore, the court will determine whether plaintiff’s constitutional rights  
11    were violated. *See Albright*, 510 U.S. at 271.

12             **i.   Fourth Amendment challenge**

13             The Fourth Amendment prohibits “unreasonable searches and seizures.” U.S. Const.  
14    amend. IV. Fourth Amendment challenges involve an objective inquiry. *See Terry v. Ohio*, 392  
15    U.S. 1, 21 (1968). The question is would “the facts available to the officer at the moment of the  
16    seizure warrant a man of reasonable caution in the belief that the action taken was appropriate?”  
17    *Id.* at 21-22.

18             A traffic stop constitutes a seizure. *See Whren v. United States*, 517 U.S. 806, 810 (1996)  
19    (holding that an automobile stop is subject to constitutional imperative that it not be unreasonable  
20    under the circumstances). Therefore, an officer must have probable cause before detaining a  
21    motorist. *See id.*

22             In determining whether an officer has probable cause at the time of an arrest, the court  
23    considers “whether at that moment the facts and circumstances within the officers’ knowledge . .  
24    . were sufficient to warrant a prudent man in believing that the petitioner had committed or was  
25    committing an offense.” *Edgerly v. City and Cnty. of San Francisco*, 599 F.3d 946, 953-54 (9th  
26    Cir. 2010) (quoting *Beck v. Ohio*, 379 U.S. 89, 91 (1964)). “Probable cause demands factual  
27    specificity and must be judged according to an objective standard.” *United States v. Struckman*,  
28    603 F.3d 731, 739 (9th Cir. 2010). Moreover, the Supreme Court recently held that probable cause

1 is “not a high bar” and depends on the “totality of the circumstances.” *See District of Columbia v.*  
2 *Wesby*, 138 S.Ct. 577, 586 (2018).

3 Furthermore, when the underlying facts claimed to support probable cause are not in  
4 dispute, whether those facts constitute probable cause is an issue of law. *See Ornelas v. United*  
5 *States*, 517 U.S. 690, 696-97 (1996) (holding that the inquiry is whether the rule of law as applied  
6 to the established facts is or is not violated). Additionally, a police officer has immunity if the  
7 officer arrests with probable cause. *Hutchinson v. Grant*, 796 F.3d 288, 290 (9th Cir. 1986).

8 Here, although plaintiff was initially told that he was being arrested under the firearm  
9 ordinance, plaintiff was arrested for the original reckless driving offense. (ECF No. 34, Ex. B, C).  
10 Therefore, the inquiry is whether the defendant officers had the requisite probable cause to arrest  
11 plaintiff for reckless driving in violation of Nev.Rev.Stat § 484B.653(1)(a). *See Edgerly*, 599 F.3d  
12 at 954 (holding that an officer can have probable cause for any criminal offense, regardless of the  
13 stated reason for the arrest). The statute prohibits a person from driving “a vehicle in willful or  
14 wanton disregard of the safety of persons or property.” Nev.Rev.Stat. § 484B.653(1)(a).

15 Although plaintiff disputes that he was driving recklessly and speeding in a residential  
16 neighborhood in his response (ECF No. 35), plaintiff testified that he did not know his speed and  
17 does not dispute that he was speeding. (ECF No. 34, Ex. A at 21-22). Furthermore, plaintiff  
18 acknowledged that he noticed a “slight slide” into the intersection as he turned his vehicle. (ECF  
19 No. 34, Ex. A at 21). Defendants contend that the officers’ body camera footage establishes that  
20 plaintiff “fishtailed” through the intersection and reached speeds in excess of 50 miles per hour in  
21 a residential neighborhood. (ECF No. 34, Ex. D). The video also shows that Cobb drove 60 miles  
22 per hour for three-quarters of a mile before stopping plaintiff. *Id.*

23 Plaintiff argues that the body camera footage is incomplete because both defendant officers  
24 turned off their body cameras in violation of standard officer protocol. (ECF No. 35). Plaintiff  
25 contends that the defendants’ failure to comply with body camera protocol creates a material issue  
26 of fact as to whether exculpatory evidence was withheld that could confirm that the traffic stop  
27 was without probable cause. *Id.* However, plaintiff does not dispute the accuracy of the driving  
28 captured on the unedited body camera video, thereby supporting the validity of the underlying

1 footage. (ECF No. 35); *see Scott*, 550 U.S. at 378 (holding that video evidence is preferred when  
2 there are no allegations that the videotape was doctored or altered, nor any contention that what it  
3 depicts differs from what actually happened).

4 Uncontroverted body camera footage from the defendant officers and plaintiff's testimony  
5 establish undisputed facts surrounding the traffic stop and arrest. (ECF Nos. 34, 35). Therefore,  
6 probable cause is a question of law. *See Ornelas*, 517 U.S. at 696-97. Because plaintiff was  
7 driving at speeds that caused him to "slide" into an intersection while turning his vehicle, defendant  
8 officers had probable cause to arrest plaintiff under Nev.Rev.Stat § 484B.653(1)(a). *See United*  
9 *States v. Reeves*, 798 F.Supp 1459, 1464 (E.D. Wash. 1992) (holding that driving 20 miles per  
10 hour over the speed limit and weaving in and out of lanes without signaling is indicative of a willful  
11 disregard for the safety of others); *see also Wesby*, 138 S.Ct. at 586 (holding that probable cause  
12 is not a high bar).

13 Plaintiff's contention disputing whether there was "probable cause for a traffic stop or  
14 simply a traffic citation" involves a discretionary issue rather than a probable cause issue. (ECF  
15 No. 35 at 3); *see Nev.Rev.Stat § 484A.730* (a police officer has the option to give a citation or  
16 perform a custodial arrest of any individual stopped for any violation of chapters 484A to 484E,  
17 inclusive). Even though plaintiff disagrees with his arrest for reckless driving, this does not  
18 necessarily implicate probable cause. *See Nev.Rev.Stat § 484A.730*.

19 Plaintiff has failed to present "specific facts showing that there is a genuine issue for trial."  
20 *See Lujan*, 497 U.S. at 888. Accordingly, the court will grant defendants' motion for summary  
21 judgment on plaintiff's 42 U.S.C. § 1983 civil rights claims. *See Hutchinson*, 796 F.3d at 290.

## 22 **ii. Qualified immunity**

23 Defendants alternatively argue that they are entitled to qualified immunity if the court  
24 concludes that summary judgment is not appropriate on plaintiff's substantive § 1983 civil rights  
25 claims. (ECF No. 34 at 15). Because this court concludes that defendants are entitled to summary  
26 judgment on plaintiff's § 1983 civil rights claims, qualified immunity will not be addressed.

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28 . . .

1                   **b. False arrest and false imprisonment**

2           False arrest and false imprisonment claims are evaluated under the reasonableness standard  
3 of the Fourth Amendment. *See Luchtel v. Hagemann*, 623 F.3d 975, 984 (9th Cir. 2010) (affirming  
4 summary judgment on false arrest claim because the police had probable cause); *see also United*  
5 *States v. Manzo-Jurado*, 457 F.3d 928, 934 (9th Cir. 2006) (holding that reasonable suspicion  
6 constitutes legal justification for the restraint). Therefore, probable cause is an absolute defense  
7 to false arrest and false imprisonment claims. *See Luchtel*, 623 F.3d at 984.

8           Plaintiff asserts that defendants violated Nevada state law by falsely arresting and  
9 imprisoning him. (ECF No. 25). As previously stated, the court concludes that defendant officers  
10 had probable cause to stop and arrest plaintiff for reckless driving. Accordingly, the court will  
11 grant defendants' motion for summary judgment on plaintiff's false arrest and false imprisonment  
12 claims. *See Luchtel*, 623 F.3d at 984.

13                   **c. Negligent hiring, training, supervision, and retention**

14           In a negligence action, the plaintiff must demonstrate "(1) that the defendant had a duty to  
15 exercise due care with respect to the plaintiff; (2) that the defendant breached this duty; (3) that  
16 the breach was both the actual and proximate cause of the plaintiff's injury; and (4) that the plaintiff  
17 was damaged." *Belch v. Las Vegas Metro Police Dep't*, 2012 WL 4610803, at \*11 (D. Nev. 2012)  
18 (quoting *Joynt v. Cal. Hotel & Casino*, 835 P.2d 799, 801 (Nev. 1992)).

19           Plaintiff contends that LVMPD failed to adequately hire, train, supervise, and retain the  
20 defendant officers. (ECF No. 25). Plaintiff supports these claims by stating that "the officers  
21 admit they violated department protocol, that they did not know the law, and that they made a  
22 series of legal errors which resulted in Mr. Brigance's arrest." (ECF No. 35 at 9). However,  
23 plaintiff has failed to produce any evidence to substantiate these claims and has failed to establish  
24 how these accusations relate to his negligence cause of action against LVMPD. (ECF Nos. 25, 35,  
25 36). Conclusory accusations that are unsupported by factual evidence cannot avoid summary  
26 judgment. *See Taylor*, 880 F.2d at 1045. Accordingly, the court will grant defendants' motion for  
27 summary judgment on plaintiff's negligent hiring, training, supervision, and retention claims.

28   ...

